

Wage and Hour Division, Labor

§ 780.814

- (a) Transporting seed cotton from farms or other points to the gin.
- (b) General maintenance work (as opposed to operating repairs).
- (c) General office and custodial duties.
- (d) "Watching" duties.
- (e) Working in the seed house.
- (f) Transporting seed, hulls, and ginned bales away from the gin.
- (g) Any activity performed during the "off-season."

COUNTY WHERE COTTON IS GROWN IN COMMERCIAL QUANTITIES

§ 780.811 Exemption dependent upon place of employment generally.

Under the first part of section 13(b)(15), if the employee's work meets the requirements for exemption, the location of the place of employment where he performs it will determine whether the exemption is applicable. This location is required to be in a county where cotton is grown in commercial quantities. The exemption will apply, however, to an employee who performs such work in "any" place of employment in such a county. The place of employment in which he engages in ginning need not be an establishment exclusively or even principally devoted to such operations; nor is it important whether the place of employment is on a farm or in a town or city in such a county, or whether or to what extent the cotton ginned there comes from the county in which the ginning is done or from nearby or distant sources. It is enough if the place of employment where the employee is engaged in ginning cotton for market is "located" in such a county.

§ 780.812 "County."

As used in the section 13(b)(15) exemption, the term "county" refers to the political subdivision of a State commonly known as such, whether or not such a unit bears that name in a particular State. It would, for example, refer to the political subdivision known as a "parish" in the State of Louisiana. A place of employment would not be located in a county, within the meaning of the exemption, if it were located in a city which, in the particular State, was not a part of any county.

§ 780.813 "County where cotton is grown."

For the exemption to apply, the employee must be ginning cotton in a place of employment in a county where cotton "is grown" in the described quantities. It is the cotton grown, not the cotton ginned in the place of employment, to which the quantity test is applicable. The quantities of cotton ginned in the county do not matter, so long as the requisite quantities are grown there.

§ 780.814 "Grown in commercial quantities."

Cotton must be "grown in commercial quantities" in the county where the place of employment is located if an employee ginning cotton in such place is to be exempt under section 13(b)(15). The term "commercial quantities" is not defined in the statute, but in the cotton-growing areas of the country there should be little question in most instances as to whether commercial quantities of cotton are grown in the county where the ginning is done. If it should become necessary to determine whether commercial quantities are grown in a particular county, it would appear appropriate in view of crop-year variations to consider average quantities produced over a representative period such as 5 years. On the question of whether the quantities grown are "commercial" quantities, the trade understanding of what are "commercial" quantities of cotton would be important. It would appear appropriate also to measure "commercial" quantities in terms of marketable lint cotton in bales rather than by acreage or amounts of seed cotton grown, since seed cotton is not a commercially marketable product (*Mangan v. State*, 76 Ala. 60). Also, production of a commodity in "commercial" quantities generally involves quantities sufficient for sale with a reasonable expectation of some return to the producers in excess of costs (*Bianco v. Hess* (Ariz.), 339 P. 2d 1038; *Nystel v. Thomas* (Tex. Civ. App.) 42 S.W. 2d 168).